

REMARKS

Claims 1-43 are currently pending, in which claims 1, 12, 21, 32 and 41 are independent. Claims 6 and 26 have been amended and claims 12-20, 32-40, 42 and 43 have been canceled. Independent claim 44 and claims 45-54 are newly added system claims and include subject matter similar to claims 1-11 and 21-31. As such, claims 1-11, 21-31, 41 and 44-54 remain pending. No new matter has been added by way of these amendments. Favorable reconsideration of the action is respectfully requested in view of the foregoing amendments and the following comments of the Applicants, which are preceded by related comments of the Examiner in small bold type:

**Claim Rejections - 35 USC § 101**

1. Claims 21 and 32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 21 and 32 defines a computer program embodying functional descriptive material. However, the claim does not define a computer-readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive to be realized" – Guidelines Annex IV). That is, the scope of the presently claimed a computer program can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the claim to embody the program on "computer-readable medium" or equivalent in order to make the claim statutory. Any amendment to the claims should be commensurate with the corresponding disclosure.

Claims 22-31, 33-40 and 43 are rejected by virtue of their dependency.

The applicant respectfully disagrees with and does not concede the Examiner's position. However, to expedite prosecution, claims 32-40 and 43 have been canceled. In reply to the action of 5 April 2007, independent claim 21 was amended for a "computer program product embodied on a computer readable medium...", just as suggested by the Examiner. As such, the applicant submits that claims 21-31 are in condition for allowance.

**Claim Rejections - 35 USC § 102**

2. Claims 12 and 32 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Deriving intrinsic images from images sequences, by Weiss.

Applicant : Michael D. Schuster  
Serial No. : 10/643,279  
Filed : August 18, 2003  
Page : 11 of 11

Attorney's Docket No.: 07844-569001 / P524

The applicant respectfully disagrees with and does not concede the Examiner's position. However, to expedite prosecution, claims 12-20 and 32-40 have been canceled. As such, the applicant submits that the rejection is rendered moot.

**Allowable Subject Matter**

**3. Claims 1-11 and 41 allowed.**

The applicant appreciates the Examiner's statement that claims 1-11 and 41 are in condition for allowance. Based up the amendments above, the applicant submits that claims 21-31 and 44-54 are also in condition for allowance.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing remarks, the entire application is now believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

No fees are believed due at this time. Please apply any charges or credits to deposit account 06-1050, referencing Attorney Docket No. 07844-569001.

Respectfully submitted,

Date: 16 January 2008

  
\_\_\_\_\_  
Jeffrey J. Barclay  
Reg. No. 48,950

Fish & Richardson P.C.  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906